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The EU and International legal Framework in Maritime Safety

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Abstract

The main goal of this paper is to elaborate EU and International Legislative framework and further perspective of Maritime law in the area of Safety protection. In recent years, the EU and its Member States have been at the forefront of improving safety legislation and promoting high-quality standards. The existing model of EU has a legal personality under International law. Previously, only the European Community had been granted legal personality (by Article 281 of the EC Treaty), while the legal personality of the EU was not regulated and thus remained disputed. Since its entry into force, the Treaty of Lisbon provides explicit legal personality for the EU [1]. EU's action in the field of Maritime Safety regulation generates significant added value to the international framework as looked after by the International Maritime Organization (IMO). The transposition of IMO rules into the EU legal system ensures their enforcement across the entire EU. In addition, the EU plays an important role on continuously improving international standards with specific dedication to the increasing of safety legislation. Generally, the EU Maritime Legislative framework is under International Institutional umbrella and strictly directed to the establishing of solid relations with various Institutions. The International law and Safety regulations of the sea control become matter of a high level concern for many states and related authorities. The concept of the International legal framework, the UN Convention on the Law of the Sea of 1982 (UNCLOS), faces challenges of various numbers of unsettled issues and practices in order to satisfy current and increasing needs for ensuring safety at the sea.

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This paper elaborates some of the aspects towards globalization of Safety Regulatory Systems that achieved very serious collective concerns with large expanses of the sea. Having in mind this fact, as consequences of real threats, the lawmakers established various Legal instruments, well composed and structured known as Safety packages, (Erika 1, 2, 3).

Additionally, the paper aims to provide a brief overview concerning unlawful activities have happened which have been resulted with high level of amended legal instruments. This means that the process of permanent legal upgrading is need to be done towards the essential objectives in order to prevent negative trends and particular increasing of safety protection through the EU and International Community.

Globally, the area of Maritime safety issue becomes more common threat identified and therefore it needs urgent and permanent actions.

Keywords: Maritime Transport; Maritime Safety Law; International Community Law; International legal instruments.

1. Introduction

The shipping industry is not homogeneous, but consists of several discrete sectors, each of which operates in different commercial and regulatory regimes. But, generally, shipping is focusing mainly to the Maritime in wider perspective and depends of various subjects which are connected within the inter-consisting of performing maritime. Taking into account that fact that Shipping is the safest form of commercial transport and perhaps uniquely amongst industries involving physical risk, commitment to safety has long pervaded virtually all deep sea shipping operations.

In general, Shipping was amongst the very first industries to adopt widely implemented International Safety Standards. Statistically, shipping is of strategic importance to the EU economy. This is why the EU is constantly developing and intensifying its maritime safety policy which the aim eradicating substandard shipping, essentially through a convergent application of internationally agreed rules.

The European Union is highly dependent on Maritime transport for its trade with the rest of the world and within its internal market. Approximately 74%¹ of the goods imported and exported by the Union and 37%² of the exchanges within the Union transit through seaports [2].

In recent years, the European Union and its Member States have been at the forefront of improving maritime safety legislation and promoting high-quality standards. The aim is to eliminate substandard shipping, increase the safety protection of passengers and crews, reduce the risk of environmental pollution, and ensure that operators who follow good practices.

Whilst many flag States and owners are meeting their international obligations, their efforts are constantly undermined by those who do not play the game according to the rules. When operators break the rules on safety measures, they put crews at risk and in addition benefit from unfair competition.

EU action in the field of Maritime Safety generates significant added value to the international framework as looked after by the IMO.

In this respect, IMO has effective and efficient mechanisms in place for the elaboration, development and adoption of international treaties, rules and regulations and their implementation through the tacit acceptance procedure adopted for amendments to most fundamental international conventions.

During 2007, IMO has continued focusing its activities on the adoption and implementation of international rules and standards for the safety of navigation, prevention of the pollution of the marine environment and maritime security.

The wide acceptance and legitimacy of IMO's mandate, in accordance with international law, is evidenced by the following facts:

- 167 sovereign States representing all regions of the world are Members of IMO;
- Members are entitled to participate at meetings of IMO bodies in charge of the elaboration and adoption of recommendations containing safety, security and antipollution rules and standards.

These rules and standards are normally adopted by consensus and all States, irrespective of whether they are Members of IMO are invited to participate at IMO conferences for adopting new IMO conventions [3].

In this context, one crucial point is the process of transposition of IMO rules into the EU legal system which ensures their enforcement across the entire EU.

In addition, the EU plays an important role in improving international standards by initiating and contributing directly to their adoption at international level. The rules are subjects of common benefit.

In general terms, the Maritime Safety issue is one of the essential elements of the Maritime transport worldwide which depends of many specifics, circumstances and unpredictable events with urgent needs to be regulated on a proper manner.

Maritime transport is inherently international in character, and on most voyages vessels operate under the regulatory requirements of many jurisdictions. It is therefore not unexpected that the evolution of regulations governing the maritime transport industry has been reliant on a broad degree of consensus between nations, without which any such standards would be of limited value.

Based on its nature, the safety of Maritime transport is regulated by various United Nations agencies, such as the International Labor Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD) and in particular the International Maritime Organization (IMO), which has developed a comprehensive framework of global maritime safety regulations.

In practice, Safety regulatory regime is formulated on the basis of the collective judgment in respect of

circumstances and unpredictability of the events in the international community at the IMO and by national administrations.

In principle, they can be assumed to reflect a net public benefit, as these institutions are the most suitable agents to make those judgments. However, it is important that all regulations, existing and new, are subjected to regular scrutiny to ensure they meet their objectives, and that reforms should be considered whenever there is a lack of plausible evidence that the public benefits of these regulations exceed their cost.

Creating new mechanisms within the Maritime transport for self-regulation, to ensure that all players, companies, brokers, insurers, financiers and cargo generators work together to raise high level of safety standards, thus gradually eliminating the need for heavy regulation by governments.

2. EU and International Maritime Safety legislation

From the legal point of view, the EU has acted as a flag State, port State and coastal State and measures the trends in this development against the international legal framework. In this context a crucial question which arises is related to the EU law preciously area of Maritime Safety as a subject of highly concerned from Member states and International Community.

The European Union's Maritime Safety legislation is a relatively novel field of activity of the EU, but its development has been very rapid. Since 1993, over 40 acts of EU law have been adopted, dealing with a variety of subjects, such as Safety, Port State control, Classification societies, Vessel traffic management, Ship construction, Environmental protection and pollution sanctions. [4].

This legislation is established and promoted from the point of International law, notably the:

- The Law of the sea;
- The International maritime conventions.

2.1. The Law of the sea

The 1982 United Nations Convention on the Law of the Sea regulates marine activities of states. It establishes a legal framework based on different maritime zones and flag, port and coastal state jurisdiction, which is defined as follows:

- The LOSC obliges states to take measures to prevent, reduce and control pollution of the marine environment and using the best practical means at their disposal and in accordance with their capabilities. States have a duty to cooperate, incorporated into several LOSC provisions;
- The extent to which a state can exercise jurisdiction is subject to the LOSC and other rules of international law and differs per maritime zone. A state has full sovereignty over its internal waters. Part of the internal waters of a state is a state's ports;

- Sovereignty of a state over its ports is recognized as a rule of customary international law and is confirmed in several provisions of the LOSC;
- A coastal state can exercise (limited) jurisdiction over its territorial sea and Exclusive Economic Zone and thus is allowed to prescribe and enforce certain rules relating to foreign vessels;
- The high seas are described as 'all parts of the seas that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an Archipelagic State'. The high seas are characterized by an open-access regime that gives all states the right to freely navigate fish or conduct other activities. Vessels on the high seas are subject to the exclusive jurisdiction of the flag state.
- A coastal state has generally no jurisdiction over foreign flagged vessels. However, exclusive flag state jurisdiction is not an absolute rule. Derogation is permitted if there is an exception expressly provided for in international treaties or in the LOSC itself.

2.2. *The International Maritime Conventions*

From the International point of view, the Law of the sea provides strict regulation, management and governance of the ocean spaces that cover over two-thirds of the Earth's surface with specifics related to the foundational principles of the law of the sea, including many bilateral, regional and global agreements that supplement the Convention.

In respect of the International Community regulatory framework, it is important to be emphasized that the relationship between EU law and International law within is very much influenced of Maritime Safety Law.

From the point of International Mechanism structure, the formation of maritime regulations are negotiated and decided in intergovernmental conferences. The regulations have to be in conformance with the main provisions regulated at the law of the sea, UNCLOS.

The regulations have to be implemented by each individual state in their domestic law, and it is the responsibility of the individual state to enforce the provisions of the regulations on the ships under its jurisdiction. The main actors in the formation process are the states and IMO, although other interested parties can actively influence the outcomes.

The formation phase is here defined to end with the implementation of the negotiated international regulations in domestic law or similar in the respective states [5].

Generally, the performance of Maritime safety is regulated Internationally, Regionally and Nationally.

3. *International Maritime Regulations*

As an International activity, Maritime Transport industry encounters regulations and practices, both international as well as national. Overall these regulations and practices can be classified under two broad headings:

- **Regulations related to the rights and obligations of states and to safety:**

The Law of the Sea - rights and obligations of flag states;

- **Regulations related to the different legal regime:**

- National safety regulations;
- Regional safety regulations;
- International safety regulations.

Generally, the national, regional and international regulations are composed as a one action, essentially are very much connected and with broader concept are depending and complemented of each other's. It should be recognized from the beginning that the genesis, purpose and application of the regulations under each of these broad headings are fundamentally different, and measures under each heading are having related researched values in order to improve current legislative framework.

3.1. Regulations and practices relating to the rights and obligations of states and to safety

The UN Convention of the Law of the Sea of 1982 (UNCLOS - Annex C) is the most basic legal instrument, which provides the basis for the regulation of ships and the provision of maritime transport services. This establishes a comprehensive set of regulations governing the world's seas and oceans, and spells out the basic rights and obligations of states over vessels which fly their flag.

The Paris MOU is the model upon which other regions of the world base their agreements on port state control. Since its entry into force the number of states in the Paris MOU has grown. This has mainly been due to the increase in the number of Member states of the EU.

With this Memorandum, for the first time safety issue was performed, a regular and systematic control of ships was exercised by a regional group of port states which are parties to the relevant Conventions. The Memorandum of understanding is not an International convention. It is an administrative agreement that has been subscribed and executed in the framework of the co-operation among the maritime authorities of the states.

In this point, the question arises - Why was there a preference for a Memorandum of understanding rather than a Convention, which from an international juridical point of view is a more powerful instrument? It was realized that Conventions usually require lengthy ratification procedures and similar problems will be faced when conventions need to be amended. Therefore, a Memorandum of understanding has been established instead of a Convention.

The challenge for the Paris MoU is to contribute to technical, operational and safety management standards and to eliminate shipping that fails to meet and maintain these standards at all times. A further challenge is to identify and evaluate factors influencing safety culture and to turn them into practical and effective mechanisms for further developing a quality and safety culture throughout the maritime community [6].

3.2. Regulations related to the different legal regime

3.2.1. National safety regulations

A limited number of national safety regulations - other than the provisions made under International Conventions. From the national regulatory view, it should be noted that states in the area of safety and environment act sometimes unilaterally interpreting for their own flag vessels international rates more strictly than required under international conventions.

Because of different regions of the world, and straddle the entire spectrum of national development, members bring widely differing views on what represents appropriate technical standards for vessels safety, crew requirements and pollution prevention. These standards are therefore frequently compromises, and may not meet the expectations of all countries. In some circumstances, these differing views may culminate in specific national requirements designed to meet a particular problem.

Some national regulations may require considerable investments to meet them, and in some instances can become a de facto international standard.

3.2.2. Regional Safety Regulations

Regional legislation in a field that is traditionally regulated primarily by means of international conventions is bound to create tensions with the related international conventions and with well-established principles of international law [7].

The Regional legislation in a field that is traditionally regulated primarily by means of International conventions is bound to create tensions with the related international conventions and with well-established principles of international law. During the last three decades the regional legal framework is consist of the several regional agreements in which the essence of port state control is deeply regulated in order to impose safety measures, including marine environment regime.

The International Community has responded to the perceived failure by some flag states to adequately enforce internationally agreed safety standards by putting in place parallel regulations enabling port states (i.e. those whose ports are visited by ships flying other flags) to ensure that applicable international requirements for the safety of vessels are being met. In this context, all applicable Conventions are made in the IMO, a UN specialized agency responsible for improving maritime safety and preventing pollution from ships.

The IMO's Conventions, once ratified and in force, form the basis of national and international regulations covering all aspects of vessel standards and crew requirements, aimed at improving safety and protecting crews and the environment.

"The authors in [8], noted that the rules and institutions established by the Convention on the Law of the Sea places the achievements of the Convention in both historical and contemporary context". All of the main areas of the law of the sea are addressed including the foundations and sources of the law, the nature and extent of the

maritime zones, the delimitation of overlapping maritime boundaries, the place of archipelagic and other special states in the law of the sea, navigational rights and freedoms, military activities at sea, and marine resource and conservation issues including fisheries, marine environmental protection, and dispute settlement.

3.2.3. *International Safety Instruments*

The understanding of the instrument is clearly defined with the basic principles of the MOUs invoke International Instruments that are legally binding for states parties. The instruments do not set any new standards, but basically aim to make sure that all ships operating in the region meet the internationally agreed standards.

In this context, means that only internationally accepted conventions shall be enforced during the port state control inspections. For instance, under the Paris MOU states parties to the Paris MOU commit themselves to enforce the conventions which are referred to as the relevant instrument [9].

Having in mind the complexity of applying of regulations on different levels, it is important to be mentioned some specific which possibilities of arising practical difficulties, especially in respect of the IMO's Conventions.

3.3. *EU and International Safety standards and practices*

The EU approach is that International Safety Standards must be rigorously upheld, but unfortunately quite a number of flag States are systematically ignoring or seriously failing to implement and enforce International Safety Standards. Maritime Safety Policy as a structured action plan has to correspondence with the EU-International Safety standards.

Because these represent different regions of the world, and straddle the entire spectrum of national development, members bring widely differing views on what represents appropriate technical standards for vessels safety, crew requirements and pollution prevention.

These standards are therefore frequently compromises, and may not meet the expectations of all countries.

In some circumstances, these differing views may culminate in specific national requirements designed to meet a particular problem. Such alternative standards, though important to the country that promulgates them, can create serious problems for ship operators, who have to meet the (generally) higher standards associated with these one of national regulations. Some national regulations may require considerable investments to meet them, and in some instances can become de facto international standards.

The maintenance of International Safety Standards is a prominent motivation for regulatory practices in the maritime transport sector. Regulations are put in place to protect safety of lives at sea as well as the protection of the marine environment. Since 1960 a series of ship safety and pollution prevention regulations have been elaborated by the International Maritime Organization that now apply in almost all countries.

For better understating, the effectiveness of global International legal instruments the following examples is briefly elaborated as follows:

The “International Convention for the Safety of Life at Sea,” or “SOLAS 74” (25 May 1980)

“SOLAS 74” specifies various requirements for vessel equipment and operation to promote safety of life at sea. As the IMO explains:

The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety.

In this context, the flag states are responsible for ensuring that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done.

In accordance with the “International Safety Management Code” or “ISM Code”, the principal objectives of the ISM Code, which became mandatory are focusing to the enhance safety at sea, prevention of human injury or loss of life and avoiding damage to the environment or property [10].

4. EU Maritime Safety Policy

Maritime Transport is of strategic importance to the EU economy and that is a main reason of the constantly developing, upgrading and intensifying of EU Maritime safety policy which the aim eradicating maritime substandard, essentially through a convergent application of internationally agreed rules. Within its institutional capacity the European Union has been seriously involved in creation of Policy making procedures in the area of Maritime safety in order to with a view to establishing a European maritime transport space without barriers.

4.1. Safety development

In recent years, the European Union and its Member States have been at the forefront of improving Maritime Safety legislation and promoting high-quality standards. The structured Safety Policy aims is to eliminate substandard shipping, increase the protection of passengers and crews, reduce the risk of environmental pollution, and ensure that operators who follow good practices are not put at a commercial disadvantage compared to those who are prepared to take short cuts with vessel safety.

Whilst many flag States and owners are meeting their international obligations, their efforts are constantly undermined by those who do not play the game according to the rules.

For many years the EU did not have a uniform and comprehensive Maritime Policy (divergent views of the Member States in terms of the priorities of transport). Since the beginning of 80's the Maritime Transport Policy development started to be on serious consideration by some concerned Member States emphasizing the need for urgent establishing a Shipping Policy. Establishing of Safety Maritime Framework generates a need for

adequate Maritime Safety Policy.

The EU started to take interest in Maritime Safety Policy only in the 90s. Until then it seemed sufficient that EU Member States were parties to the IMO and were implementing International Conventions.

However, between 1986 and 1991 the worldwide rate of total losses of ships averaged 230 vessels per year, of which losses of oil tankers constituted a considerable part. Some of these vessels seriously damaged EU marine ecosystems. As a result, still maintaining its commitment to the implementation of international rules, the Council of the EU passed a resolution calling upon the European Commission to start promoting and improving EU action in the area of Maritime Safety [11].

4.2. *The Integrated Maritime Policy*

Maritime transport services are essential for the European economy to compete globally. So, it was necessary to establish Integrated Maritime Policy (IMP), as a political initiative, not using formal legal procedures, and is led by DG MARE.

Even if the EU now has an overarching Integrated Maritime Policy, it has to face the fact that MS's still possess much authority over their maritime areas. There clearly is a vast challenge of co-ordinating the actions of 28 sovereign nations (out of which 5 are land-locked) that exercise most of the powers pertaining to their sea areas. This distinguishes the EU's formulation of an Integrated Maritime Policy from the efforts of federal states to create such a regional policy [12].

4.3. *The Regulatory Regime of Safety*

The legislative framework is represented by Regulations related to the rights and obligations of states and to safety. In this context the Safety structure consists of several sub areas as well as, the law of the sea (rights and obligations of flag states, international safety regulations, national safety regulations, flag state and port state inspections, international labor regulations).

4.4. *Importance of Safety actions-Inspection*

One of the actions which are an essential component of providing Safety is related to the Inspection matters. In that context, the European Union has built its legislation on IMO Resolutions and the work by the Paris Memorandum of Understanding on Port State Control which since 1982 provides the framework to carry out their inspection duties.

4.5. *Perspectives*

The European Union, within its Maritime Policy, has been following the international rules. The EU rules consist mostly of IMO rules made binding on the EU level. This has an added value: it allows for EU enforcement. Further, The Commission can verify the implementation of the rules by the Member States and

start an infringement procedure at the European Court of Justice if the implementation is not correct. Sometimes, however, the EU rules may go further than the IMO rules and provide for stricter standards in EU territory.

An interesting characteristic of the EU “maritime” legislation is that the EU rules are mostly of “Port state” nature. In effect, the EU acts as a port state and the rules are enforced in ports. Coastal and flag state enforcement is much less common. The legislative reviews in other chapters support these conclusions.

5. EU Institutions and Regulations

5.1. EU Council legal instruments

- The EU Council adopted several directives and regulations on safety that mostly implemented IMO rules:

Council Directive 95/21/EC Concerning the Enforcement, in Respect of Shipping Using Community Ports and Sailing in the Waters Under the Jurisdiction of the Member States, of International Standards for Ship Safety, by which the voluntary rules on port state control included in the Paris Memorandum were made binding in the EU;

- Council Directive 94/57/EC on Common Rules and Standards for Ship Inspection and Survey Organizations and for the Relevant Activities of Maritime Administrations;
- Council Directive 98/18/EC on Safety Rules and Standards for Passenger Ships;
- Council Directive 93/75/EEC on Vessel Traffic Monitoring and Information System;
- Council Directive 99/35/EC on a System of Mandatory Surveys for the Safe Operation of Regular Ro-Ro Ferry and High-speed Passenger Craft Services;
- Council Directive 97/70/EC on Safety Fishing Vessels;
- Council Directive 98/41/EC on the registration of persons on board passenger ships;

Later, due to further developments and ongoing consequences related to the new specific circumstances all these Directives are modified and amended [13]. European Commission, Transport directives: Maritime Transport, Mobility and Transport, 2014.

5.2. EU Parliament and Council legal instruments

Erika I package

The Erika I package contained measures on port state control, classification societies and double-hull oil tankers:

A package of legal measures, called the “Erika I package,” was issued by the Commission in March 2000. It consisted of proposals for a directive strengthening port state inspections in the EU, a directive strengthening the monitoring of the activities of classification societies, and a regulation introducing an accelerated timetable for the withdrawal of single-hulled tankers. In consequence, three measures were adopted:

- Directive 2001/105/EC of the European Parliament and of the Council of 19 December 2001

Amending Council Directive 94/57/EC on Common Rules and Standards for Ship Inspection and Survey Organizations and for the Relevant Activities of Maritime Administrations;;

- Directive 2001/106/EC of the European Parliament and of the Council of 19 December 2001 Amending Council Directive 95/21/EC Concerning the Enforcement, in Respect of Shipping Using Community Ports and Sailing in the Waters Under the Jurisdiction of the Member States, of International Standards for Ship Safety, Pollution Prevention and Shipboard Living and Working Conditions , PSC ;

Erika II package

The Erika II package consists of measures on monitoring, controlling and setting up an information system, a fund to compensate victims of oil pollution and the creation of a Maritime Safety Agency:

- Regulation (EC) No. 417/2002 of the European Parliament and of the Council of 18 February 2002 on the Accelerated Phasing-in of Double Hull or Equivalent Design Requirements for Single Hull Oil Tankers and Repealing Council Regulation (EC) No. 2798/9434 In December 2000, the Commission issued a second package of proposals, the “Erika II package” ;

These proposals included a regulation creating the European Maritime Safety Agency (EMSA), a directive concerning the establishing of a monitoring and information system for improving the surveillance of traffic in European waters, and a regulation aimed at establishing a complementary European fund (amounting to one billion euro) for the indemnity of victims of oil spills.

Two measures were adopted:

- Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 Establishing a Community Vessel Traffic Monitoring and Information System and Repealing Council Directive 93/75/EEC. This instrument is dedicated to the Traffic monitoring in order to establish preservation and prevention by imposing traffic monitoring and information system with a view to enhance the safety and efficiency of maritime traffic, improve the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations;
- Regulation (EC) No. 1406/2002 of the European Parliament and of the Council of 27 June 2002 Establishing a European Maritime Safety Agency.

The EU approach is that international standards must be rigorously upheld, but unfortunately quite a number of flag States are systematically ignoring or seriously failing to implement and enforce International safety standards. As a result, although maritime safety is traditionally based on the role of flag states, the European Union considered it appropriate to complete the flag state approach by the port state approach where inspections by the states where ports are located are seen by many as the most effective tool to reduce substandard shipping in their waters.

The European Union has built its legislation on IMO Resolutions and the work by the Paris Memorandum of

Understanding on Port State Control which since 1982 provides the framework to carry out their inspection duties.

3rd Maritime Safety Package

In January 2004, the European Commission announced a new package of legislative measures. The Commission Communication on the Erika III package was presented to Parliament and Council on 8 February 2006 (ERI-001). The third maritime safety package was adopted by the European Parliament on 11 March 2009. Most of the measures in the package took effect in late 2010.

- Directive 2009/16/EC;

In 2009, as a part of the 3rd Maritime Safety Package, the European Parliament and Council adopted Directive 2009/16/EC, which ensures that, as of 1 January 2011, the "New Inspection Regime" (NIR) of the Paris MoU applies in all the EU coastal states plus Canada, Croatia, Iceland, Norway and the Russian Federation. Additionally, the NIR is based on an advanced IT information system ("THETIS ") managed by the European Maritime Safety Agency (EMSA).

- Regulation 391/2009/EC

Regulation 391/2009/EC, adopted in 2009 improved the system of EU-wide mutual recognition of Classification Societies. Under this Regulation only highly reliable and professionally competent bodies are allowed by the EU, as "recognized organizations", to carry out statutory surveys and certification on behalf of EU Member States. The strategic objective of this Regulation is to ensure high level of quality of the major Classification Societies of the world, which classify and control safety of more than 90% of the world's cargo carrying tonnage.

These private companies produce safety standards for ships construction and maintenance, conduct inspections on board ships during their lifetime and issue certificates under International Conventions on behalf of flag states. In the fact, the Regulation 391/2009/EC allows the EU to indirectly control safety of the majority of the worldwide fleet, even of ships not flying the flag of an EU Member State.

Amended Documents

Regulations related to the Safety Fishing Vessels (Council Directive 97/70/EC of 11 December 1997, Commission Directive 1999/19/EC of 18 March 1999, amending Council Directive 97/70/EC, Commission Directive 2002/35/EC of 25 April 2002, amending Council Directive 97/70/EC [14].

Regulations related to the Safety of passenger ships

In March 1998, Directive 98/18/EC was adopted to introduce a uniform level of safety for new and existing passenger ships and high speed passenger craft engaged on domestic voyages by harmonizing safety standards.

It incorporated the provisions of IMO's SOLAS convention for the Safety of Life at Sea by establishing detailed technical requirements. The original Directive (98/18/EC) and its modifications were consolidated and codified in Directive 2009/45/EC, which has since been updated by Commission Directive 2010/36/EC.

Commission Directive 2002/25/EC of 5 March 2002, amending Council Directive 98/18/EC on safety rules and standards for passenger ship.

The scope was subsequently widened through Regulation (EC) 336/2006 to include all passenger and cargo ships operating internationally under a Member State flag or under any flag if operating domestically or using a Member State port for a regular service.

6. Recommendations

Safety regulations affecting Maritime Safety are strongly underpinned by decision of the international community, principally working through the International Maritime Organization, to develop standards, and then giving effect to these through national regulations. In taking these decisions the international community needs to judge whether the social benefits resulting from these standards and regulations exceed the immediate costs to the providers and users of shipping.

The reason for this is that while there is a clear relationship between effective safety regulations, and the incidence of vessel damage/loss, it does not necessarily follow that simply adding to these regulations will always be matched by commensurate increases in safety.

There is often a major divide between States motivated by strong safety concerns and those States which often include, but are not limited to, lesser developed countries or offshore registries, motivated by different priorities and realities, including financial considerations, the capabilities of their maritime administrations and their overall safety records. Proposals for new and improved safety initiatives are often met by arguments to retain the status quo or to introduce delays or compromises. This, in turn, leads to increasing polarization among member States which effectively inhibits the achievement of the objectives of the Organization.

7. Conclusion

Regardless of serious safety treats, the Maritime safety achieved to the level of abusing of rights and regulations. Having in mind such a situation, the enforcement powers granted to the states to protect severity and territorial integrity including its own interest related to the sea.

The Maritime Safety is progressing in creation of high level of EU safety standards, prevention of maritime accidents like the Erika and Prestige oil tanker disasters. The SafeSeaNet system for exchanging maritime information was setup. In practice this system helps authorities find out what steps need to be taken to prevent or deal with a maritime accident off their shores.

In legislative area, rules and standards put in place in Europe have also had an impact internationally. In this

context, if a ship is simply passing through EU waters, with neither the point of departure or arrival being located in Europe, it still has to comply with the rules. Europe is leading by example. It has, for instance, led the move to phase out single-hull in favor of double-hull tankers, which offer better environmental protection in the event of accidents [15].

7.1 Needs

The necessity of imposing New State Strategy of acting based on a duly authorized legal framework by having full powers in order to regulate and to prevent strict safety measures and functioning of solid regulatory system.

The main purpose of the Strategy up to 18 is to present the Common strategic goals for the European Maritime Transport System up to 2018 and to identify key areas for action where action by the EU will strengthen the competitiveness of the Maritime sector. Among the others, the issue of Maritime Safety is considered with a high priority.

The essence of the Strategy declares that the “The EU and its Member States have a strong common interest in promoting safe, secure and efficient intra-European and International shipping on clean oceans and seas, the long- term competitiveness of European shipping and related maritime industries in world markets, and the adaptation of the entire seaborne transport system to the challenges of the 21st century.

Straight forward objective is a safe and fair Maritime transport, at EU and world-wide level in order to ensure the sustainable development of seaborne transport in the 21st century. The phases are structured within the content of the several Strategic Directions:

- The commission and Member States would have to work together,
- The implementation of the Marine Strategy Framework Directive is a key objective of the IM,
- Enhanced integrated governance structures at all levels,
- Strengthened international dialogue.

The development of targeted strategies and specific measures for each sea basin in Europe. The Commission is working for the permanent develops and support of the Maritime Policy.

Safety regulations affecting Maritime are strongly underpinned by decision of the International community, principally working through the International Maritime Organization, to develop standards, and then giving effect to these through national regulations. In taking these decisions the international community needs to judge whether the social benefits resulting from these standards and regulations exceed the immediate costs to the providers and users of Maritime. Having in mind that safety, lives and the environment are involved, such differentiation can sometimes be difficult, but that does not mean that proposals for new regulations should not be closely scrutinized to ensure they will achieve their intended aim, or that existing regulations should not also be scrutinized to ensure that there are no unintended negative effects.

For example, the following approaches, which are not mutually exclusive, could be considered as alternative

courses of action:

- Adopt a Formal Safety Assessment as an alternative to prescriptive regulation;
- Make changes in the institutional framework for safety regulation. A radical idea is the creation, by international agreement, of new powers for IMO to intervene directly with Member States who fail to live up to their treaty obligations;
- Create new mechanisms within the shipping industry for self-regulation, to ensure that all players, including brokers, insurers, financiers and cargo generators work together to raise standards, thus gradually eliminating the need for heavy regulation by governments.

From the EU Institutional point, in broad terms, the strategic goals of the Commission Communication refer to two main issues:

- The ability of the maritime transport sector to provide cost-efficient maritime transport services adapted to the needs of sustainable economic growth of the EU and world economies and
- The long-term competitiveness of the EU shipping sector, enhancing its capacity to generate value and employment in the EU, both directly and indirectly, through the whole cluster of maritime industries [16].

The Maritime Safety is facing big challenges towards globalization and ongoing changes in the modern world.

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